

Zoning Board of Appeals

7 p.m. meeting

September 12, 2013

The Hall, 2<sup>nd</sup> Floor, Memorial Hall Library, 2 N. Main Street, Elm Square, Andover

---

Present were: Brown (Chair); McDonough (Clerk); Boness & Bargnesi, Members; and Oltman (Associate Member).

The meeting opened at 7:36 p.m.

Petition No.: 4048

Premises affected: 1 Riverside Dr

Petitioner: Charm Sciences, Inc.

Attorney Bob Lavoie, with an office at 12 Chestnut St., Andover, represented the applicant & their request for variances from the requirements of Art. VIII, Sections 3.1.3.d.2 &/or 5.2.6.1 &/or 5.2.8.1.b and/or for special permits under Art. VIII, Section 5.2.8.1.b &/or 3.3.2 to erect a free-standing sign on a corner lot that is bisected by a zoning district boundary (SRC & IA). The front portion of the lot that fronts on River Rd is the 200' strip in the SRC district created to buffer residential abutters from the IA district. They are requesting permission to erect a sign, which is an accessory use, in the SRC district. Lavoie submitted a letter of support from Doyle Lumber, abutter at 40 & 43 River Rd). [Board Member Magenheimer arrived at 7:45 pm] He noted that Charm Science's building is not visible from River Rd; therefore the need for the sign is even greater to increase visibility of the business & direct anyone looking for the building. The proposed sign will be on a 10'x10' concrete pad, 7'1" high & 56 s.f. The maximum sign allowed in SRC is 2 s.f., by special permit 6 s.f. is allowed. The proposed sign will be 10' from the sidewalk and approximately 80' from the nearest abutter. It will not be illuminated, but will include the business address (1 Riverside Dr) to direct customers to the site. There was some discussion on the proposed location of the sign to increase visibility & directing traffic to the business. Lavoie submitted photos of nearby business signage, noting that extensive wetlands on his client's lot further restrict the location of the sign. No review is required by the Conservation Commission due to its distance from the wetlands. Boness suggested that input from the Design Review Board would be helpful, even though the lot is non-jurisdictional, to ensure conformity for the industrial area, especially regarding scale. Hannah Bowitch, abutter at 38 River Rd., voiced concern about any sign decreasing her property value & stated that she is not in favor, but not opposed. Rick Sciffington, President of Charm, informed the Board that there is only signage on the building currently and is only visible upon approach to the building once you are on Riverside Drive. Lavoie reiterated the requested relief: a special permit for the non-conforming use (a sign in SRC district) or a variance for the size of the sign (other signs exist on River Rd). He suggested that the Board take a site view. The Board felt that they had enough evidence, including the submitted photos. McDonough made a motion to waive a site view & close the public hearing. Boness seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate the matter. Bargnesi pointed out the proposed sign's similarity to other commercial signs in the area, stating a preference for a smaller sign similar to Doyle Lumber. Oltman stated that the proposed size may be necessary to increase visibility & safety. Boness feels it is in scale with other signs, identifying that the 10'x10' concrete pad at the base of the sign is not on the plan in the package. [Sciffington offered to recess the pad & seed grass over it.] McDonough voiced concern over whether the sign will provide enough directional guidance. Brown commented that the proposed sign is a bit too large and too close to the street. He is inclined to grant a variance with restrictions on the structural support to provide landscaping around the sign. McDonough made a motion to grant variances from Art. VIII, Sections 5.2.6.1 & 5.2.8.1.b with the following conditions: that it be constructed in substantial conformance with the plans and cannot be larger than the sign depicted on the plan, the base must not be exposed and must allow for landscaping to be installed around the sign. Boness seconded the motion & the Board voted (4-1) (Bargnesi opposed) to grant the variances with condition. McDonough made a motion to deny the special permits as moot. Boness seconded the motion & the Board voted (5-0) to deny the special permits as moot. Oltman will write the decision.

Petition No.: 4053

Premises affected: 94 Woburn St

Petitioner: ACT

ACT Executive Director, Susan Stott, submitted a letter to the Board requesting that the Board not open the hearing but to continue it to 10/3/13 also granting an extension to open the hearing until 10/3/13.

Petition No.: 4049

Premises affected: 11 Cheever Circle

Petitioner: Pendelton

Gerry Pendelton, owner, & Arthur Watson, builder, were present to request a variance from 4.1.2 &/or a special permit under 3.3.5 to construct a 2-car garage addition with living space (bedroom) above that will not meet the minimum front & side yard depth requirements. The existing 1-car garage & breezeway will be removed. The hardship stated is the house being located in the middle of the lot effectively decreasing the possibility of constructing a conforming addition. The proposed addition is in character with the neighborhood. They have spoken to abutters & they were in favor. The house was built in 1937. The proposed side setback will be 12'. The Board discussed design alternatives in order to meet the minimum 15' side setback. Pendelton stated that they did consider alternatives. He noted that the lot slopes away from the front 2.5-3'. The immediate abutter most impacted by the proposed addition has approximately a 12-15' side setback also. The abutter's garage is next to the Pendelton's garage, but they do not have living space above their garage. There were no other questions or comments from the public. Oltman made a motion to waive the site view & close the public hearing. McDonough seconded the motion & the Board voted (6-0) to waive the view & close the hearing. Oltman was designated as an alternate & sat off the remainder of the case. The Board then proceeded to deliberate. Brown noted that the proposed addition is similar to others in the neighborhood's character of small lots. He suggested granting relief in the form of a variance due to the increase in the non-conformity. Boness commented that the design minimizes the width as much as possible without losing the breezeway. Bargnesi, Magenheim & McDonough agreed adding that the deviation is minor. Magenheim made a motion to grant a variance from 4.1.2 with the condition that the addition is constructed in conformance with the architectural drawings & plot plan submitted with the petition. Bargnesi seconded the motion & the Board voted (5-0) to grant the variance with conditions. Magenheim made a motion to deny the special permit as moot. Bargnesi seconded the motion & the Board voted (5-0) to deny the special permit as moot. Magenheim will write the decision.

Petition No.: 4051 & 4058

Premises affected: 21 River ST

Petitioner: 607 Turnpike LLC

This is a continued public hearing from 6/6/13. Attorney Mark Johnson, 12 Chestnut St, Andover, and Bill McLeod, engineer, were present on behalf of the applicant. Johnson submitted a revised site plan & architectural changes. He gave an overview of the proposal (dividing the lot, preserving the historic house & constructing a new single family home on the new lot). He informed the Board that they appeared before the Preservation Commission on 9/10/13. McLeod summarized the project: subdivide into 2 lots resulting in a 15,000 s.f. lot on which the existing house will remain & a 19,000 s.f. lot that will have a new house with 2-car garage with north side entrance. The house & cellar floor will be above the 100 yr flood elevation and there is town sewer & water available on the street. No variance is needed since the proposal will meet the bylaw requirements under the dimensional special permit for historic preservation.

Stanton Daily, 23 River St., asked for the proposed setback on his side of the project. It will be 13' at the front corner of the house & 11' at the rear corner to the side lot line. Ken LaRose, 53 Porter Rd., Andover, the petitioner, explained that the aesthetics were changed to be more compatible with the neighborhood based on several meeting with Preservation & their input. There is a letter from Preservation Commission in the packet. The existing house will be repaired with some minor interior alterations & exterior repairs. Johnson submitted the Preservation Restriction language to the Board, as required by the bylaw, which will be recorded at the Registry of Deeds after Preservation, Board of Selectmen & the State sign it. Karen Herman, Chair of the Preservation Commission, informed the Board that they voted to approve the project explaining the historic

significance of the existing house which is on the Andover Historic Building Survey. Jim Batchelder, Preservation Commission member, submitted for the packet the historic background of the house, which was part of the Ballardvale Machine Shop. Brown asked to what extent the changes differ from the original house. Batchelder pointed to the 1885 view in the packet as the same structure that will be preserved. (Herman submitted the 1885 plan) There were no further public comments or questions, nor from the applicant's team. Magenheim made a motion to waive the site view & close the public hearing. Bargnesi seconded the motion & the Board voted (6-0) to waive the view & close the hearing. Bargnesi sat off the remainder of the case. The Board then proceeded to deliberate.

Boness noted that the applicant addressed the Board's & abutters' concerns stating that he is in favor of the project. Magenheim, Oltman & McDonough agreed. Brown does not believe a variance is required. Boness made a motion to grant a special permit under 7.9 with the conditions that the project be constructed in conformance with the plans submitted in addition to the conditions as required in the bylaw. Oltman seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Brown will write the decision. Boness made a motion to deny the variance as moot. Magenheim seconded the motion & the Board voted (5-0) to deny the variance as moot. Attorney Johnson agreed to submit draft language regarding the proposal & the property description.

Member Bargnesi recused herself from the following case and left the meeting room.

Petition No.: 4047

Premises affected: 138 Chandler Rd

Petitioner: New Cingular Wireless

Members: Brown, McDonough, Boness, Oltman, Magenheim

Attorney Edward Pare presented the request for special permits under sections 3.1.3.F.15, 6.1.1 & 9.4, as well as a variance from section 6.1.2.1. The proposed 190' wireless monopole will not meet the minimum setback requirements in the SRC district. Pare noted that AT&T is currently installed on the nearby Gowdy Tower at 130-140' height. Magenheim disclosed that Brown, Rudnick, the firm that Attorney Pare works with, is a client of his employer & that the relationship does not relate to wireless communications, it is an ongoing business relationship in which he does not have direct dealing with Pare. No one objected to Magenheim's participation. Pare gave an overview of the project: AT&T is upgrading their network; due to structural concerns on existing tower they need a new location; they have been unable to get the existing tower owner to upgrade; in 2008 the ZBA approved their 3G installation, but it hasn't been installed due to the structural issues of the existing tower. Therefore, they proposed to erect a new tower that will be 190' without guy wires. It will minimally impact the proposed site as it is near Rt 93 & is self-supporting. The proposed setback is 190' from the center of the tower, 204' to Lots A & B as shown on the plan (Town owned lots). They are proposing to locate it as close to the landfill & Rt 93 as possible and as far from residential properties as possible. The closest residential structure is 1150' from the tower. The purpose of the new tower is to provide coverage without the 2G antennas on the Gowdy tower (they will be removed so long as it is structurally safe to do so). The 190', in excess of the bylaw's allowed 125', will allow them to provide coverage. Pare noted that the balloon test has yet to be conducted. Boness asked for an RF map of current coverage. Pare explained that the map would show good coverage with the 2G antennas, but not 3 or 4G coverage. Boness asked for the map of AT&T's coverage in town / the area to provide additional coverage, a broader view than what was provided. Boness commented that they say the existing tower is structurally inadequate, yet in 2008 the installation was approved based on stamped calculations that it was structurally adequate. The letter in the current packet does not state the reason. Boness asked for a new structural analysis for the existing tower. Pare informed the Board that his client cannot have access to the tower. Boness reminded Pare that they need to prove that the existing pole is structurally inadequate to justify erecting a new monopole. Brown suggested that if they are unable to provide the structural analysis, a letter from the owners is needed. Boness asked for photo simulations (they are forthcoming) & if the land being conveyed to the Town is open space. He also noted that there is a Phase I & II analysis on the site. Jonathan McNeil, site analyst, stated that he is aware of the issues, but the analysis is not in the packet. Boness told them to submit the analysis.

The Board discussed the base elevation & setbacks of the proposed tower, including changing its location on the lot in order to meet setbacks. Pare explained that the proposed location is aesthetic. The Board asked for a wider map of the surrounding area showing residential abutters. Pare informed the Board that they need relief from the 14-day requirement to fly balloons from the hearing date. They can conduct the test on either 9/29 or 10/5, with 10/6 & 10/12 as back-up dates. They will take photos in addition to what the bylaw requires. Brown suggested to continue the hearing to the 11/7 meeting. John Beloian, 146 Chandler Rd, commented that the tower will be very visible from his house. Brown instructed Pare to have a photo taken from 146 Chandler Rd. Boness asked if they've filed with Conservation Commission. They have not, but will soon. There being no other questions or comments from the Board or public, Magenheim made a motion to continue the hearing to the 11/7/13 meeting. Boness seconded the motion & the Board voted (5-0) to continue the hearing to the 11/7/13 meeting.

Bargnesi reentered the meeting room to participate in the remaining hearings.

Petition No.: 4050

Premises affected: 18-20 Red Spring Rd

Petitioner: Dundee Red Spring LLC

Members: Brown, McDonough, Boness, Bargnesi, Magenheim

Attorney Michael Rosen represented the applicant's request for a special permit under 3.1.3.2 to change an existing non-conforming use to new non-conforming uses. The building is formerly the Redman Card Company, manufacturing since approximately 1814. In 1843 it became part of the Smith & Dove mills. This is the only property in the mill complex on the West side of the Shawsheen River and in the SRA district. When Dundee Park purchased it in 1996/97, it was approximately 15% occupied with 3 tenants. If the special permit is approved, they propose to increase occupancy & employment with a mix of uses, making it more viable. There are 5 units (18,700 s.f. total). The proposed uses are similar to those already conducted in Dundee Park. They have identified 14 potential uses, which would be less detrimental than the previous non-conforming use. Redman Card Co. occupied the building until February 2013. The existing wood frame building will be razed, there will be no residential use in the other building & it will be necessary to expand the pavement to accommodate parking. The Board discussed a new footbridge over the existing sewer pipe that goes across the river to access additional parking. The Board suggested reaching out to residential abutters in order to discuss the proposal, in particular lighting that will overspill the property. The Board discussed signage; however it is uncertain at this time what is proposed since there are no tenants yet. The Board also discussed traffic concerns, particularly in the winter, due to increased volume. Rosen informed the Board that they met with Planning Director Paul Materazzo, as well as representatives of the Police & Fire Departments. Traffic mitigation will be a part of the parking plan/design. But without ZBA approval, they cannot go any further in the development process. The Board discussed continuing the hearing to October 3<sup>rd</sup> in order to receive additional Town staff input. Rosen voiced concern over losing a potential tenant. Bargnesi made a motion to waive the site view & close the public hearing. Magenheim seconded the motion. The Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate. Bargnesi made a motion to grant the special permit under 3.3.2 only to change the non-conforming use to allow only the non-conforming uses listed on pages 1-2 of the application, but no other use and that no other relief is requested or granted. Magenheim seconded the motion & the Board voted (4-1) (Boness opposed) to approve the special permit only for the non-conforming uses listed on pages 1-2 of the application. Brown will write the decision. Rosen agreed to submit a draft narrative.

The Board then held their Annual Meeting / Election of Chair & Clerk.

McDonough nominated Brown as the Chair. Magenheim seconded the nomination & the Board voted (5-0) to elect Brown as the Chair. McDonough & Magenheim both expressed their willingness to be the Clerk. Boness nominated Magenheim to be Clerk. McDonough seconded the nomination & the Board voted (5-0) to elect Magenheim as Clerk.

There being no other business of the Board, they adjourned the meeting at 10:33 p.m.